Supreme Court, U.S.
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OFFICE OF THE CLERK

NO. 91-1383
IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

STATE OF ALABAMA, PETITIONER

V.

CLAYTON JOEL FLOWERS, RESPONDENT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

* W. DONALD BOLTON, JR.
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STATEMENT OF THE CASE

Your respondent substantially accepts and adopts by reference the statement of the case submitted by the petitioner, with the exception of the following amendment.

On March 22, 1992 the respondent was granted an extension of time within which to file a response to the petition for writ of certiorari to and including April 17, 1992. The respondent also filed a motion for leave to proceed in forma pauperis on March 24, 1992.

REASONS FOR DENYING THE WRIT

THIS COURT SHOULD DENY THE WRIT BECAUSE THE RULING FROM THE ALABAMA COURT OF CRIMINAL APPEALS IS CONSISTENT WITH THIS COURT'S PREVIOUS RULING IN THE CASE OF THOMPSON V. OKLAHOMA, 487 U.S. 815 (1988).

This Honorable Court should deny the petitioner's petition for writ of certiorari because the Alabama Court of Criminal Appeals has decided this question consistent with this Court's previous ruling in the case of Thompson v. Oklahoma, 108 S.Ct. 2687 (1988). Contrary to the petitioner's assertion, the Court of Criminal Appeals did not decide a substantial federal question which has not been previously addressed by this Honorable Court.

Your respondent was fifteen (15) years old at the time of the purported offense. The case in Thompson v. Oklahoma, supra, involved a fifteen (15) year old defendant who committed a capital offense which, like the one at bar, was found to be especially heinous, atrocious or cruel. Id at 2690. Like this appellant, the fifteen (15) year old defendant in Thompson was sentenced to death. This Honorable Court, on grounds that are inescapably applicable to the present case, vacated the death sentence in Thompson.

Four (4) members of this Court joined in a plurality opinion, holding that it was unconstitutional to impose a death sentence for a crime committed when the defendant was under sixteen (16) years of age regardless of the circumstances. 108 S.Ct. at 2689-2700 (opinion of Stevens, J., joined by Brennan, Marshall and Blackmun, J.J.). Justice O'Connor concurred in the judgment and wrote a separate opinion. Id at 2706-2711. There were

three (3) dissenters (Scalia, J., joined by Reinquist, C.J. and White, J.). Justice Kennedy did not take part in the decision.

Because Justice O'Connor's position is necessary to have a judgment supported by five (5) Justices, her opinion constitutes the holding. As this Court has previously explained:

> When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of 5 Justices, 'the holding of the Court may be viewed as that position taken by those members who concurred in the judgments on the narrowest grounds . . .' Gregg v. Georgia, 428 U.S. 153, 169 n. 15 (1976) (opinion of Stewart, Powell, and Stevens, J.J.). . . .

Marks v. United States, 430 U.S. 188, 193 (1977); accord Lakewood v. Plain Dealer, 486 U.S. 750, 764 n. 9 (1988).

Therefore, this Court must look to Justice O'Connor's opinion, the narrowest ground of reversal in Thompson, for the rule of law it must apply.

Unlike the four-member plurality, Justice O'Connor did not conclude that the death penalty was unconstitutional in every circumstance involving a fifteen (15) year old murderer. She expressly declined to address that question, because she did not find it necessary to the resolution of the case. 108 S.Ct. at 2710. Instead, Justice O'Connor concluded that:

> The case before us today raises some of the same concerns that have led us to erect barriers to the imposition of capital punishment in other contexts. Oklahoma has enacted a statute that authorizes capital punishment for murder, without setting any minimum age at which the commission of murder may lead to the imposition of that penalty. The state has also, but quite separately, provided that 15 year old murder defendants may be treated as adults in some circumstances. Because it proceeded in this manner, there is a considerable risk that the Oklahoma legislature either did not realize that its actions would have the effect of rendering 15 year old defendants death-

> eligible or did not give the question the serious consideration that would have been reflected in the explicit choice of some minimum age for death-eligibility. Were it clear that no national consensus forbids the imposition of capital punishment for crimes committed before the age of 16, the implicit nature of the Oklahoma legislature's decision would not be constitutionally problematic. In the peculiar circumstances we face today, however, the Oklahoma statutes have presented this court with the result that is of very dubious constitutionality, and they have done so without the earmarks of careful consideration that we have required for other kinds of decisions leading to the death penalty. In this unique situation, I am prepared to conclude that petitioner and others who are below the age of 16 at the time of their offense may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution.

Id, at 2710-2711 (emphasis added and footnote omitted).

Alabama's capital punishment statute, Alabama Code §§13A-5-39 through 13A-5-59 (1975), like Oklahoma's, does not specify a minimum age at which the commission of a capital crime can lead to the offender's execution. 108 S.Ct. at 2695 (plurality opinion) (specifically listing Alabama as such a state). It is true that Alabama has a statute specifying that juveniles, including fifteen (15) year olds, can be certified to stand trial as adults, and the respondent was certified to stand trial as an adult under that statute. Alabama Code §12-15-34 (1975). However, the defendant in Thompson was certified to stand trial as an adult under Oklahoma's statutes, a fact expressly recognized by every Justice who participated in the Thompson decision, including Justice O'Connor. Id at 2690 (plurality opinion); Id at 2710-2711 (O'Connor, J., concurring); Id at 2713 (dissenting opinion).

At the time of the Thompson decision, eighteen (18) states provided for capital punishment but only for defendants of some minimum age above fifteen (15) years old, and

nineteen (19) states provided capital punishment without specifying a minimum age. 108 S.Ct. at 2695-2696 & n. 29 (plurality opinion). In all nineteen (19) of those states, including Oklahoma and Alabama, a defendant who is fifteen (15) years old when he committed the capital offense could be certified to stand trial as an adult and could receive a death sentence through that procedure. Id at 2707 (concurring opinion of O'Connor, J.). It is to those nineteen (19) statutory systems, including the Oklahoma and Alabama statutes, that Justice O'Connor spoke. Because her opinion is the narrowest ground for the judgment in Thompson, it is the holding of this Court, as has been previously discussed. Under the Thompson holding, a defendant who is fifteen (15) at the time of the capital offense cannot be sentenced to death in a state whose capital punishment statute does not specify a minimum age below sixteen (16), even if the defendant was certified to stand trial as an adult under that state's laws. That holding inescapably applies to this case, just as it did to Thompson's case.

The Alabama Court of Criminal Appeals properly applied the Thompson decision by vacating the respondent's death sentence. It recognized the fact that United States Supreme Court decisions are binding upon it and ruled accordingly. An analogous situation arose in the wake of Furman v. Georgia, 408 U.S. 238 (1972), a five-to-four judgment in which there were nine separate opinions and no two (2) Justices could agree on the same opinion. Because Alabama was not a party to that case, Alabama's pre-Furman statute was not directly involved. Nevertheless, the Alabama Supreme Court held that:

> "There is no question that Furman has, as of now, eliminated the death penalty from our statute, §318, supra."

Hubbard v. State, 290 Ala. 118, 119, 274 So.2d 298, 300 (1973). The Alabama Supreme Court vacated death sentences in the wake of Furman, even though it had doubts about the wisdom of that decision:

> "Under the holding of the Federal Supreme Court in Furman, supra, which we are required to follow, the death penalty cannot be inflicted in the instant case. The permanency of the decision in Furman is doubtful but it must be here applied."

290 Ala. at 120; 274 So.2d at 301.

It is clear that the Alabama Court of Criminal Appeals properly interpreted the Thompson decision and applied it in its ruling.

Your respondent would be remiss if he did not point out to this Honorable Court that the original position taken by the State of Alabama in this case was that the trial court erred to reversal by sentencing the respondent to death. Shortly after sentencing, Honorable Ed Cairns, Assistant Alabama Attorney General, (now a nominee to the vacancy on the Eleventh Circuit Court of Appeals) wrote the Baldwin County, Alabama District Attorney a letter advising the District Attorney of the trial judge's error in sentencing. A copy of this February 26, 1990 letter is annexed hereto as Appendix A to this Brief in Opposition to the Petition for Writ of Certiorari. A flurry of correspondence was subsequently exchanged between the Office of the Alabama Attorney General and the Baldwin County, Alabama District Attorney's office. (This correspondence is likewise annexed hereto as Appendix B-F). It should also be observed that when this case was argued before the Alabama Court

of Criminal Appeals, the State of Alabama conceded the point that the imposition of the death sentence in this case was contrary to this Honorable Court's previous ruling in Thompson v. Oklahoma and that said sentence was due to be vacated. Honorable James H. Evans took office as the Alabama Attorney General shortly before oral arguments in this case before the Alabama Court of Criminal Appeals. Notwithstanding his office's previous position concerning the imposition of the death sentence in this case, Attorney General Evans later argued that the death sentence was properly imposed and that the ruling of the Court of Criminal Appeals should be reversed. Inasmuch as the petitioner's previous position was that the death sentence was due to be vacated, the State of Alabama has waived whatever right it possibly enjoyed in challenging the ruling of the Alabama Court of Criminal Appeals, and should not be permitted to complain about the State appellate court's ruling. Therefore, this Honorable Court should affirm the decision of the Alabama Court of Criminal Appeals and deny the writ.

CONCLUSION

For the reasons stated above, this Honorable Court should deny the writ of certiorari and affirm the decision from the appellate court below.

Respectfully submitted,

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Attorneys of Record for Respondent
Clayton Joel Flowers

CERTIFICATE OF SERVICE

STATE OF ALABAMA	)	TO THE UNITED STATES
	)	SUPREME COURT
Petitioner,	)	
	)	NO. 91-1383
vs.	)	
	)	CIRCUIT COURT CASE
CLAYTON JOEL FLOWERS	)	NUMBER: CC-89-65
	)	
Respondent.	)	
	)	

I certify that I served this Reply Brief of Respondent on the Hon. James H. Evans, Attorney General, Hon. Thomas W. Sorrells, Assistant Attorney General, and Hon. John David Whetstone, District Attorney, by placing a copy in the United States mail, postage prepaid, and properly addressed as follows:

Hon. James H. Evans, Attorney General
11 South Union Street
Montgomery, Alabama 36130

Hon. Thomas W. Sorrells, Assistant Attorney General
11 South Union Street
Montgomery, Alabama 36130

Hon. John David Whetstone
Baldwin County, Alabama District Attorney
Post Office Box 58
Bay Minette, Alabama 36507

Done this 15th day of April, 1992.

THACK H. DYSON

OFFICE OF THE
ATTORNEY GENERAL
DON SIEGELMAN
ATTORNEY GENERAL
MONTGOMERY, ALABAMA 36130
(205) 261-7400

STATE OF ALABAMA

February 26, 1990

Honorable J. David Whetstone
Baldwin County District Attorney
Baldwin County Courthouse
Courthouse Square
Day Minette, Alabama 36507

Dear Dave:

I read in the weekend paper that a murderer named Clayton Joel Flowers had been sentenced to death in Baldwin County Circuit Court for a murder he committed when he was fifteen years of age.

Such a result is prohibited under Thompson v. Oklahoma, 108 S.Ct. 2687 (1988). In that case, four justices concluded that the Constitution prohibited the execution of anyone who committed his murder before reaching the age of sixteen. A fifth justice, Justice O'Connor, was necessary to the holding and her opinion defines it. She concurred in the result, vacating the death sentence imposed for a murder committed before the age of sixteen, because in her opinion the Constitution prohibits such a death sentence unless the capital punishment statute under which it was imposed expressly specifies that death is an available sentence for murders committed before the defendant reached age sixteen. 109 S.Ct. at 2711 ("petitioner and others who were below the age of 16 at the time of their offense may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of a capital crime can lead to the offender's execution.") (footnote omitted).

Under the Thompson decision, no one can be executed in Alabama for a crime committed before he reached age sixteen. It is true that other provisions of Alabama law provide that fifteen-year-olds can be certified for trial as adults, but that was true of Oklahoma law in the Thompson case, also. What is required is a specific provision in the capital punishment statute itself permitting execution for a crime committed before age sixteen. The death sentence in Thompson was vacated

because Oklahoma's capital punishment statute had no such provision. Alabama's capital punishment statute does not, either.

It will save some time, trouble, and embarrassment if you correct this error now. Otherwise, the Court of Criminal Appeals will have to do so in an opinion which, of course, will be permanently published.

Sincerely,

Ed Carnes
Assistant Attorney General

EC:sf
cc: Hon. James H. Reid
Hon. Al Pennington

1716t

OFFICE OF THE DISTRICT ATTORNEY

ROBERT E. WILTERS
CHIEF ASSISTANT DISTRICT ATTORNEY
LAURA DAHLE
ASSISTANT DISTRICT ATTORNEY
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JOHN DAVID WHETSTONE
DISTRICT ATTORNEY
TWENTY-EIGHTH JUDICIAL CIRCUIT

March 6, 1990

Honorable Ed Carnes
Assistant Attorney General
State of Alabama
State House
Montgomery, Alabama 36130

Dear Ed:

I have your letter of February 26, 1990, relative to the conviction of Clayton Joel Flowers who was sentenced to death in Baldwin County for a murder he committed when he was fifteen years of age.

I have read your letter, which I appreciate, but respectfully disagree with. I have read the decision of Thompson v. Oklahoma, and have reached the conclusion that four Justices voted one way, four Justices voted another, and Justice Sandra O'Connor took a third route. I am convinced that no case in Alabama has ruled whether or not, under Alabama scheme, Thompson v. Oklahoma, comes into play, or better yet, Justice O'Connor's singular decision in Thompson v. Oklahoma comes into play.

Since the vote was so close and there exists a possibility of a Justice change before this case reaches the United States Supreme Court, I believe the issue is still ripe and has not been finally decided in Alabama.

I would appreciate the Attorney General representing this matter on appeal so that we can get a Court decision in Alabama which clarifies this matter.

I appreciate your letter very much and the intent with which you forwarded it and hope that you understand my position.

I remain,

Very truly yours,

JOHN D. WHETSTONE
District Attorney

/kh
cc: Honorable James H. Reid
Honorable Al Pennington

OFFICE OF THE
ATTORNEY GENERAL
DON SIEGELMAN
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MONTGOMERY, ALABAMA 36130
(205) 261-7400

STATE OF ALABAMA

March 9, 1990

Honorable John David Whetstone
District Attorney
Post Office Box 58
Bay Minette, AL 36507

RE: State v. Clayton Joel Flowers

Dear Dave:

Thank you for your letter of March 6, 1990, and I appreciate the spirit in which it was written. I feel that I fully understand your position, and want to make sure that you understand my position, which is the position of the Capital Litigation Division of the Attorney General's Office.

It is true that the vote of the justices in Thompson v. Oklahoma, 108 S.Ct. 2687 (1988), was close, but that does not make the decision any less the law. For example, on Tuesday of this week, the United States Supreme Court handed down four capital punishment decisions, from four different states, and three of those decisions resolved important issues in favor of the states. All three cases that our side won were decided by a 5 to 4 vote, but those three decisions are nonetheless the law of the land. I intend to use those three 5 to 4 decisions to the fullest in representing the State, just as I would if the vote had been 9 to 0. It simply is not true that decisions of the Supreme Court that are based on a close vote of the justices can be disregarded.

As you point out, the five justices who agreed in the result in Thompson did not join a single opinion. Four justices joined an opinion that said no one who was 15 years of age at the time he committed the murder could be sentenced to death under any circumstances. (Three justices dissented, and Justice Kennedy did not participate.) Justice O'Connor, who provided the fifth vote, wrote a separate opinion. Her opinion says that no state can impose a death sentence for a murder committed when the defendant was fifteen, unless that state's capital punishment statute expressly provides that it can be done. Oklahoma's capital punishment statute, like Alabama's,

does not contain such an express provision. Therefore, the result in Thompson was that the Supreme Court held that Oklahoma could not impose the death sentence on a murderer who was fifteen when he killed. Because Alabama's statute is materially identical to Oklahoma's on this point, the law stated in Thompson is the law that applies in Alabama. The statutes are the same regarding this point; the result is the same.

It simply is not true that a Supreme Court decision does not apply to other cases unless five or more justices join in a single opinion which puts forward a common rationale for the decision. As you will recall, the Furman v. Georgia, 408 U.S. 328 (1972), decision itself was based on nine separate opinions. Even though no two justices could agree on a common rationale in Furman, five of them agreed that the three statutes before them in that case were unconstitutional. Based on the Furman decision, every capital punishment statute in the country was invalidated, and that result followed even though Furman was a 5 to 4 decision with no majority opinion.

As you point out, "there exists a possibility of a Justice change before this case reaches the United States Supreme Court." That is always true, particularly with regard to close decisions. It was certainly true with Furman, and indeed there was some change in the membership of the Supreme Court soon after Furman. Nonetheless, Furman was, and still is, the law. One cannot violate the law laid down in Supreme Court decisions based upon the hope that by the time the violation reaches the Court it will have changed its collective mind. That is simply not the way our system of law and precedent works.

As you know, I have been representing the State in this area of the law for more than a decade. I have had a major role in the years of post-conviction litigation resulting in the seven executions we have had in Alabama in the last seven years. However, I will not advocate a result that has been held to be unconstitutional.

Unless Judge Reid changes the sentence in this case before it reaches the appellate stage, I will confess error on this issue in the Court of Criminal Appeals. I will do that in my capacity as an assistant attorney general representing the State on appeal, because I believe it is my duty to follow the Constitution as it has been interpreted by the Supreme Court, even if that interpretation came in a 5 to 4 decision (or actually, in a 5 to 3 decision).

I realize that you disagree. Even though it is not your responsibility to represent the State on appeal, because of the strength of your views on this subject, I will not object to you filing an amicus curiae brief arguing your position to the appellate courts. Indeed, I will be glad to join in any motion requesting that you be allowed to file such a brief, because I do not object to you advocating your position in the appellate courts. However, I have been assigned by the Attorney General the overall responsibility for deciding the position the State of Alabama takes on major issues arising in capital cases on appeal, and on this matter I intend to take the position I have explained to you.

The law seems clear to me, and I do not have any doubt about what the appellate courts will do, if necessary. It would be preferable for Judge Reid to follow the mandate of Thompson and correct the sentence now. However, that is up to him, not me.

Sincerely,

Ed Carnes
Assistant Attorney General
Chief, Capital Litigation
Division

EC:sf
cc: Hon. James H. Reid
Hon. Al Pennington

1745t

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March 16, 1990

Honorable Ed Carnes
Assistant Attorney General
Chief, Capital Litigation Division
Office of the Attorney General
State House
Montgomery, Alabama 36130

In re: State of Alabama v. Clayton Joel Flowers

Dear Ed:

I have your letter of March 9, 1990, relative to Clayton Joel Flowers and your opinion of the state of the law after Thompson v. Oklahoma. I agree with you that everyone should obey the law, but it is my position that the Alabama Supreme Court has not held or interpreted Alabama's capital punishment statute as to whether the Alabama Legislature specifically intended to include juveniles within the ambit of the capital statute as far as punishment is concerned.

I am reluctant, as District Attorney of this County, to presume the interpretation in this regard, and honestly believe that this issue should be decided by the Supreme Court and should not be confessed by prosecutorial authorities.

I realize we differ in this view, but I assure you that my difference is based upon what I believe to be a matter of policy and legal standing. If the Attorney General confesses error in this regard, I would wish to be heard, but can assure you that I will do so with the utmost respect to the Attorney General and to you.

Thanking you for your letter of March 9, 1990, I remain,

Very truly yours,

JOHN D. WHETSTONE
District Attorney

/kh

Appendix D

OFFICE OF THE DISTRICT ATTORNEY

ROBERT E. WILTERS
CHIEF ASSISTANT DISTRICT ATTORNEY
LAURA DAHLE
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JOHN DAVID WHETSTONE
DISTRICT ATTORNEY
TWENTY-EIGHTH JUDICIAL CIRCUIT

September 17, 1990

Honorable Don Siegleman
Attorney General
State of Alabama 36130

Dear Mr. Attorney General:

I have recently received an article which I have enclosed for your perusal concerning the death penalty and its application to juveniles.

The matter involves my prosecution and conviction of a 15 year old who sodomized a young lady in Bay Minette, beat her to death with a tire jack, and threw her body into a creek. While he was awaiting trial, he attempted to escape with another and a jail officer was beaten with a sock full of batteries. Every police officer who worked on the case informs me that he was one of the most dangerous individuals they had ever encountered. I concur.

The jury recommended life without parole and Judge Reid, after a hearing concerning the holding of Thompson vs. Oklahoma, set aside the jury verdict and imposed death.

I have read Thompson vs. Oklahoma and Judge Reid has read Thompson vs. Oklahoma and we are both in disagreement with Ed Carnes, your able Assistant Attorney General.

I must admit that Mr. Carnes is one of the leading experts in this field in this Country. I also must admit that the Supreme Court appeared, on a very narrow vote, to indicate that it would be inappropriate to execute anyone under the age of sixteen. The holding, however, includes language relative to the interpretation of juvenile law and the intent of Alabama's Legislature. I happen to have drafted portions of that law, and I am convinced that the intent of the Legislature was to treat fourteen year old juveniles the same as seventeen year old juveniles relative to a certification procedure to be treated as adults.

I fully realize the position of Mr. Carnes and can appreciate his legal ability. I am firm to the opinion, however, that if the Supreme Court wishes to hold that the execution of people under the age of sixteen is unconstitutional, that pronouncement must come from the Supreme Court of Alabama or the Supreme Court of the United States.

You are the Attorney General of this State, and I realize you may direct any case which you choose. Ed had indicated to me that he would allow me the privilege of being present and arguing against his motion. I appreciate that professional courtesy. If, on the other hand, you wish to direct me not to participate, I will obey your directive.

I would hope, however, that the Attorney General of this State would defend a judgment of death by electrocution which has been imposed by the Circuit Court of Baldwin County.

I remain,

Very truly yours,

JOHN D. WHETSTONE
District Attorney

/kh
cc: Ed Carnes

OFFICE OF THE
ATTORNEY GENERAL
DON SIEGELMAN
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MONTGOMERY, ALABAMA 36130
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STATE OF ALABAMA

October 17, 1990

Honorable John D. Whetstone
District Attorney
Twenty-Eighth Judicial Circuit
Post Office Box 58
Bay Minette, Alabama 36507

RE: Clayton Flowers v. State

Dear Dave:

Thank you for your letter concerning the appeal in this case. I have reviewed all of the correspondence between you and Ed Carnes concerning the matter.

In view of the Supreme Court's decision in Thompson v. Oklahoma, 108 S.Ct. 2687 (1988), I cannot say that the position Ed has taken is wrong. However, I do want to ensure that the Court of Criminal Appeals hears your position, also. Accordingly, I have instructed Ed to do everything he can to ensure that you are allowed to file a friend of the court brief setting out your arguments. In that way, the Court will be able to hear both sides and can decide for itself whether the Thompson case forecloses the issue.

Sincerely,

Don Siegelman
Attorney General

DS:sf
cc: Ed Carnes

2351t

OFFICE OF THE DISTRICT ATTORNEY

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JOHN DAVID WHETSTONE
DISTRICT ATTORNEY
TWENTY-EIGHTH JUDICIAL CIRCUIT

October 29, 1990

Honorable Don Siegelman, Attorney General
State of Alabama
Montgomery, Alabama 36130

Dear Don:

I have your letter of October 17, 1990, with regard to Flowers v. State.

I appreciate very much your response and understand the difficulty of Thompson v. Oklahoma and can readily understand the legal position taken by your able Assistant Attorney General, Ed Carnes.

Your professional courtesy in allowing me to file a friend of the Court brief setting out my arguments is greatly appreciated and I will do so in a manner which is respectful of any position taken by the Attorney General of this State.

I remain,

Very truly yours,

JOHN D. WHETSTONE
District Attorney

/kh
cc: Mr. Ed Carnes

NO. 91-1383

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

ALABAMA, Petitioner - Appellee

v.

CLAYTON JOEL FLOWERS, Respondent - Appellant

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF ALABAMA

CERTIFICATE OF SERVICE

I, Thomas W. Sorrells, a member of the Bar of this Court, hereby certify that on this 21st day of February, 1992, three copies of the Petition for Writ of Certiorari and the Appendix to the Petition for Writ of Certiorari in the above-entitled case were mailed, first class postage prepaid, to Honorable Thack H. Dyson, P. O. Box 998, Foley, Alabama, 36536, Honorable W. Donald Bolton, Jr., P. O. Box 259, Foley, Alabama 36536, and Honorable Al Pennington, P. O. Box 342, Mobile, Alabama 36601, counsels for the respondent herein. I further certify that all parties required to be served have been served.

Thomas W. Sorrells

JAMES H. EVANS
THOMAS W. SORRELLS
11 South Union Street
Montgomery, Alabama 36130
(205) 242-7300
Counsel for Petitioner